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10/812,833	03/30/2004	Erwin Haller	08146.0001U1	3114

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WUJCIAK, ALFRED J	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/812,833
Filing Date: March 30, 2004
Appellant(s): HALLER, ERWIN

Sumner Rosenberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/30/09 appealing from the Office action mailed 2/9/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,946,145	Kurabe	8-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 4,946,145 to Kurabe.

Kurabe teaches a vehicle seat (11) comprising a seat part (12) and a lower part (14). The vehicle seat has a desired of comfort range of travel and two out of comfort ranges of travel. The vehicle seat comprises at least one air spring (34) and a control device (74). Wherein an additional air volume is supplied to the air spring when the vehicle seat is in the comfort range of travel, and at a selectable run in/out position of the air spring, the additional air volume is switched off when the vehicle seat goes from the comfort range of travel to the out of comfort range of travel, under control of the control device, such that the volume in which the air to be compressed is less in the out of comfort range than in the comfort range of travel and the inclines in the profile of a force-path air spring characteristic of the air spring in a first and in at least one further range are different from one another (column 2, lines 7-68 and columns 6-11). In the range of the force-path air spring characteristic, the additional air volume that can be supplied or discharged is greater or smaller than in the range or is completely switch off. The additional air volume in the further range can be supplied to or discharged from the air spring in each case in a number of stages. The apparatus includes at least one pneumatic directional control valve (40) for supplying/discharging the additional air volume. The automatic height adjustment of the seat

part at the start of a use operation by a user having a predefined weight (column 1, lines 6-11) wherein air us supplied to or discharged from the air spring under control of the control device such that the air springs adjusts to a central position in the first range of the force path air spring characteristic (column 2, lines 6-43). The apparatus includes an operating device (78) operable by the user to operate the control device such that the seat part is adjusted to the desired height. The apparatus includes a recognition device (64) and switching devices (50 and 52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 9, 11-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurabe.

Kurabe teaches a vehicle seat (11) comprising a seat part (12) and a lower part (14). The vehicle seat has a desired of comfort range of travel and two out of comfort ranges of travel. The vehicle seat comprises at least one air spring (34) and a control device (74). Wherein an additional air volume is supplied to the air spring when the vehicle seat is in the comfort range of travel, and at a selectable run in/out position of the air spring, the additional air volume is switched off when the vehicle seat goes from the comfort range of travel to the out of comfort range of travel, under control of the control device, such that the volume in which the air to be compressed is less in the out of comfort range than in the comfort range of travel and the inclines

in the profile of a force-path air spring characteristic of the air spring in a first and in at least one further range are different from one another (column 2, lines 7-68 and columns 6-11). In the range of the force-path air spring characteristic, the additional air volume that can be supplied or discharged is greater or smaller than in the range or is completely switch off. The additional air volume in the further range can be supplied to or discharged from the air spring in each case in a number of stages. The apparatus includes at least one pneumatic directional control valve (40) for supplying/discharging the additional air volume. The automatic height adjustment of the seat part at the start of a use operation by a user having a predefined weight (column 1, lines 6-11) wherein air us supplied to or discharged from the air spring under control of the control device such that the air springs adjusts to a central position in the first range of the force path air spring characteristic (column 2, lines 6-43). The apparatus includes an operating device (78) operable by the user to operate the control device such that the seat part is adjusted to the desired height. The apparatus includes a recognition device (64) and switching devices (50 and 52).

Kurabe teaches all elements above but fails to teach the use of elements in method. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have specified elements in steps to provide designer's preference for setting up the elements to operate the seat in comfort/out of comfort ranges to satisfy the user when driving the vehicle.

Regarding to claim 6, Kurabe teaches a regular switch (78) but fails to teach the regular switch is located in the arm rest of the vehicle seat. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the location of regular switch to the armrest of the seat to provide convenience for a user to reach the switch on the armrest instead on the seat part.

Regarding to claim 9, Kurabe teaches the additional air volume can be supplied and discharged in the first range of force path air spring characteristic but fails to specify amount of liter for air to be supplied or discharged at 0.0-0.1 liter. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have specified the amount of liter for air to be supplied or discharged at 0.0-0.1 liter to provide designer's preference for the amount of liter to be used in the first range of the force-path air spring characteristic.

(10) Response to Argument

The appellant argues Kurabe requires air to be compressed or exhaust the air out of the system in order to operate the comfort range for the human which is opposed to applicant's invention where it requires switching the certain volume of air to provide comfort range. The examiner disagrees with the appellant because it is well known in the art when attempting to move air volume to another place such as switching, it requires some kind of force such as compressing air to move it to the other place. The appellant's invention requires compression to switch the location of air from one place to another. The control valve (40) in Kurabe's invention regulates the amount of air flow by compressing or exhausting the air in or out of system to provide comfort range for the human.

With respect to appellant's argument on page 12 stating "Again, as previously argued, the distinction the examiner continues to overlook is that claim 1 recites switching an additional volume of air, rather than compress air into, or exhausting air out of, an existing containing volume. As such, Kurabe does not anticipate claim 1 or any claims dependent thereon." The examiner disagrees with the appellant because Kurabe's control valve (40) has the ability of

switching the additional air in closed phase once the air is previously compressed in the system to provide the seat cushion in a neutral position (column 6, lines 48 – 68) and then the control valve switches the additional air to air flow exit port to allow the air to flow toward to the air spring (34) and then compress more air if needed to provide additional cushion when the vehicle is being jolted (column 7, lines 1-48).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alfred Joseph Wujciak III/

Primary Examiner, Art Unit 3632

Conferees:

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636

/Heather Shackelford/

Conferee